

**BEFORE THE DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation
Against:**

**JAMES CHRISTOPHER JOHNSTON, M.D.
Certificate #A-44527**

Respondent.

File No: 16-94-41554

DECISION AND ORDER

The attached Stipulation and Order is adopted by the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs, State of California, as its Decision in the above-entitled matter.

This Decision shall become effective on April 3, 1996.

DATED March 4, 1996.

**DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA**



Ira Lubell, M.D.

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 JANA L. TUTON, Supervising
Deputy Attorney General
3 GAIL M. HEPPELL,
Deputy Attorney General
4 1300 I St., Suite 125
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5 Sacramento, CA 94244-2550
Telephone: (916) 324-5336
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8 BEFORE THE
DIVISION OF MEDICAL QUALITY
9 MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
10 STATE OF CALIFORNIA

11 In the Matter of the Accusation)	No. 16-94-41554
Against:)	
12 JAMES CHRISTOPHER JOHNSTON, M.D.)	SURRENDER OF
13 409 Russell Boulevard, Suite B)	CERTIFICATE TO
Nacogdoches, Texas 75961)	<u>PRACTICE MEDICINE</u>
14 Physician's and Surgeon's)	
Certificate No. A44527)	
15 Respondent.)	
16)	

17 IT IS HEREBY STIPULATED by and between the parties to
18 the above-entitled matter that the following is true:

19 1. On or about February 29, 1988, respondent James
20 Christopher Johnston, M.D. (hereinafter "respondent") was issued
21 physician and surgeon's certificate number A44527. At all times
22 pertinent herein, said certificate was and currently is, in full
23 force and effect.

24 2. On January 19, 1995, an accusation bearing number
25 16-94-41554 was filed by Dixon Arnett, Executive Director of the
26 Medical Board of California (hereinafter "Board") in his official
27 capacity. Said accusation lists causes for disciplinary action
28 against respondent, and said accusation is incorporated by

1 reference as though fully set forth at this point. Respondent
2 was duly and properly served with Accusation number 16-94-41554
3 by certified mail, and respondent filed a timely Notice of
4 Defense requesting a hearing on the charges contained in the
5 accusation.

6 3. Respondent has retained as his counsel, Thomas P.
7 Sartwelle, Esq., Law Offices of Sartwelle & Radelat, L.L.P.
8 Respondent understands the charges and the allegations of
9 violation of the California Business and Professions Code alleged
10 in Accusation number 16-94-41554. Respondent understands his
11 rights under the Administrative Procedure Act of the State of
12 California, including his right to a formal hearing and
13 opportunity to defend against the charges contained therein, and
14 reconsideration and appeal of any adverse decision that might be
15 rendered following said hearing. Respondent hereby freely and
16 voluntarily surrenders his physician and surgeon's certificate
17 entitling him to practice medicine in California. Respondent
18 understands that upon acceptance of his surrender by the Division
19 of Medical Quality, respondent shall not have the right to
20 practice medicine in the State of California and will lose all
21 rights and privileges accorded by his licensure as a physician
22 and surgeon.

23 4. Respondent agrees not to petition for reinstatement
24 as a physician and surgeon for a period of at least three (3)
25 years from the effective date of his surrender. Information
26 gathered in connection with accusation number 16-94-41554 may be
27 considered by the Division in determining whether or not to grant
28 the petition for reinstatement. For the purposes of the

1 reinstatement hearing, the allegations in accusation number
2 16-94-41554 shall be deemed to be admitted by respondent, and
3 respondent waives any and all defenses based on a claim of
4 laches:

5 On September 30, 1994, his license to practice medicine
6 in Texas was restricted. Respondent entered into an Agreed Order
7 with the Texas State Board of Medical Examiners in which he
8 agreed to certain restrictions pending the resolution of criminal
9 charges. In 1995, respondent entered into a plea bargain and
10 pled guilty to eight counts of simple assault, a Class C
11 misdemeanor, punishable by fine only, and paid a fine of \$500 per
12 complainant. The conduct set forth constitutes a violation of
13 Business and Professions Code section 2305.

14 5. The parties further agree that this document shall
15 be null and void and not binding upon the parties unless and
16 until it is approved by the Division of Medical Quality of the
17 Medical Board of California.

18
19 DANIEL E. LUNGREN, Attorney General
of the State of California

20 DATED: *January 29, 1996*

21 *Gail M. Heppell*
GAIL M. HEPPELL
Deputy Attorney General
Attorneys for Complainant

22
23 SARTWELLE & RADELAT, L.L.P.

24
25 DATED: *2 Nov 1995*


26 By *Thomas P. Sartwelle*
Thomas P. Sartwelle, Esq.
Attorneys for Respondent

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28 ///

1 I HAVE READ the voluntary surrender. I understand the
2 terms and ramifications of the voluntary surrender and agree to
3 be bound by its terms.

4 DATED: 2 Nov 1995


JAMES CHRISTOPHER JOHNSTON, M.D.
Respondent

DANIEL E. LUNGREN, Attorney General
of the State of California
JANA L. TUTON
Supervising Deputy Attorney General
GAIL M. HEPPELL
Deputy Attorney General
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Sacramento, California 94244-2550
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Attorneys for Complainant

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)	CASE NO. 16-94-41554
Against:)	
)	
JAMES CHRISTOPHER JOHNSTON, M.D.)	<u>ACCUSATION</u>
409 Russell Boulevard, Suite B)	
Nacogdoches, Texas 75961)	
California Physician's and)	
Surgeon's Certificate)	
No. A44527)	
)	
Respondent.)	

Dixon Arnett, for causes for discipline, alleges:

1. Complainant Dixon Arnett makes and files this accusation in his official capacity as Executive Director of the Medical Board of California (hereinafter referred to as the "Board").

2. On February 29, 1988, the Medical Board of California issued physician's and surgeon's certificate number

1 A44527 to James Christopher Johnston, M.D. The certificate will
2 expire November 30, 1995, unless renewed.

3

4 3. Under Business and Professions Code section 2234,
5 the Division of Medical Quality shall take action against any
6 licensee who is charged with unprofessional conduct.

7 Under Business and Professions Code section 2305, the
8 revocation, suspension, or other discipline by another state of a
9 license or certificate to practice medicine issued by the state
10 shall constitute unprofessional conduct against such licensee in
11 this state.

12 Under Business and Professions Code section 118(b), the
13 expiration of a license shall not deprive the Board of
14 jurisdiction to proceed with a disciplinary action during the
15 time within which the license may be renewed, restored, or
16 reinstated.

17 Under Business and Professions Code section 2428, a
18 license which has expired may be renewed any time within five
19 years after expiration.

20 Under Business and Professions Code section 125.3, the
21 Medical Board of California may request the administrative law
22 judge to direct a licentiate found to have committed a violation
23 or violations of the licensing act to pay a sum not to exceed the
24 reasonable costs of the investigation and enforcement of the
25 case.

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1 4. Respondent has subjected his physician and surgeon
2 certificate to discipline under Business and Professions Code
3 section 2305 on the grounds of unprofessional conduct in that on
4 September 30, 1994, the State of Texas imposed discipline on
5 respondent's license to practice medicine in that state by
6 restricting respondent's license arising out of allegations that
7 respondent engaged in behavior constituting attempted sexual
8 assault against individuals who were respondent's patients. The
9 State of Texas and respondent entered into an Agreed Order prior
10 to the resolution of the criminal complaints filed. Attached as
11 Exhibit A and incorporated by reference is a true and correct copy
12 of the Agreed Order from the State of Texas.

13

14 WHEREFORE, complainant prays a hearing be had and that
15 the Medical Board of California make its order:

16 1. Revoking or suspending physician and surgeon
17 certificate number A44527, issued to James Christopher Johnston,
18 M.D.

19 2. Prohibiting James Christopher Johnston, M.D. from
20 supervising physician assistants.

21 3. Ordering James Christopher Johnston, M.D., to pay
22 to the Medical Board of California its costs for investigation
23 and enforcement according to proof at the hearing, pursuant to
24 Business and Professions Code section 125.3.

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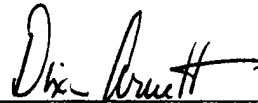
1 4. Taking such other and further action as may be
2 deemed proper and appropriate.

3 DATED: January 19, 1995

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7

DIXON ARNETT
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

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Complainant

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AIRBORNE TO STATE

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CHRONOLOGICAL TO CHAIR JACOBSON

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SA94AD1848
(SM 12/21/94)

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EXHIBIT A

G-8880

IN THE MATTER OF

BEFORE THE

THE LICENSE OF

TEXAS STATE BOARD

JAMES CHRISTOPHER JOHNSTON, M.D.

OF MEDICAL EXAMINERS

AGREED ORDER

On this the 30th day of September, 1994, came on to be heard before the Texas State Board of Medical Examiners ("the Board"), duly in session the matter of the license of James Christopher Johnston, M.D. ("Respondent"). Upon recommendation of the Board's staff and with the consent of Respondent, the Board makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. James Christopher Johnston, M.D., holds Texas medical license G-8880.
2. The Board has jurisdiction over the subject matter and Respondent. Respondent received all notice which may be required by law and by the rules of the Board. All jurisdictional requirements have been satisfied.
3. Respondent is a 34 year old physician, whose practice in Nacogdoches, Texas, has been limited to neurology.
4. Criminal complaints have been filed against Respondent in the 145th Judicial District, Nacogdoches County, Texas, alleging that Respondent has engaged in behavior constituting attempted sexual assault against individuals who were patients of Respondent.
5. Respondent denies all of the allegations made in the criminal complaints which have been filed against him.
6. On June 22, 1994, with the voluntary agreement of Respondent, the Board entered an Agreed Order placing certain restrictions on Respondent's Texas medical license.

7. Pursuant to a requirement under the terms of the Agreed Order entered on June 22, 1994, Respondent has undergone an extensive evaluation at Talbott-Marsh Recovery Systems, Atlanta, Georgia, aimed at assessing the degree of risk to the public involved in Respondent's continued practice of medicine. The report based on this evaluation concluded that there was nothing to suggest that Respondent would be unable to provide clinical services under certain restrictions and under supervision.

8. Because of the seriousness of the allegations against him, and because of his desire to focus his resources and time on defense of the criminal case, and while making no admission regarding any accusation pending against Respondent before the Board, Respondent has voluntarily agreed to the entry of this Order modifying the restrictions previously placed on his Texas medical license.

CONCLUSIONS OF LAW

1. If the allegations contained in the criminal complaints against Respondent, as referenced in Finding of Fact 4, above, are found to be true, such behavior would constitute violations of Sections 3.08(4), 3.08(4)(A), and 3.08(18) of the Medical Practice Act ("the Act"), V.A.C.S., article 4495b.

2. Section 3.08(4) of the Act authorizes the Board to discipline a licensed Texas physician based on unprofessional or dishonorable conduct that is likely to deceive or defraud the public or injure the public.

3. Section 3.08(4)(A) of the Act authorizes the Board to discipline a licensed Texas physician based on committing any act that is in violation of the laws of the State of Texas if the act is connected with the physician's practice of medicine.

4. Section 3.08(18) of the Act authorizes the Board to discipline a licensed Texas physician based on professional failure to

4. Respondent shall not place a pager or instruments in his pockets during examination of patients.
5. Respondent's patients shall be repositioned during evaluations only by a nurse or technician.
6. Respondent shall explain to all patients those procedures which involve contact between Respondent and said patient, prior to engaging in such contact.
7. Respondent shall ask patients in detail regarding any problems or concerns which they might have concerning his examinations or any procedures performed.
8. Within 60 days of the execution of this Agreed Order by Respondent, Respondent shall undergo additional phallometric testing, under the direction of an expert in such testing mutually acceptable to Respondent and the Executive Director of the Board. Such testing shall include, if required by the Executive Director of the Board, screening for medications or substances which might be taken by a test subject and which could affect the outcome of such tests.
9. Respondent shall cooperate with the Board, its attorneys, investigators, compliance officers, and other employees and agents, to verify that Respondent has complied and is in compliance with this Order.
10. Respondent shall advise the Board of any change of address, mailing or office, within (10) days of such occurrence.

practice medicine in an acceptable manner consistent with public health and welfare.

5. If Respondent is convicted of criminal sexual impropriety with any patient, such conviction would subject Respondent to discipline under Section 4.01(a) of the Act.

6. Section 4.01(a) of the Act authorizes the Board to discipline a licensed Texas physician based on an initial conviction or the initial finding of the trier of fact of guilt of a felony or misdemeanor involving moral turpitude.

7. Section 4.02(h) of the Act authorizes the Board to make a disposition of this matter by an Agreed Order.

Based on the above findings of fact and conclusions of law, it is therefore ORDERED that Respondent's Texas medical license is hereby restricted under the following terms and conditions, which shall supersede all terms and conditions of the Agreed Order entered on June 22, 1994:

1. Respondent shall not examine or treat any patient without being accompanied at all times by a proctor or chaperone, approved in advance by the Executive Director of the Board, which proctor or chaperone shall sign all patient charts to indicate his or her accompaniment of Respondent.
2. Respondent shall obtain an exam table that is specifically designed for the performance of electromyography with a standard arm board and the ability to elevate the head of the patient.
3. Respondent shall reposition his examination table so that he may walk behind patients to examine the shoulder and proximal areas.

11. Respondent shall comply with all the provisions of the Medical Practice Act ("the Act"), V.A.C.S., article 4495b, and other statutes regulating the practice of medicine, as is required by law for physicians licensed by the Board.
12. In the event that the criminal complaints pending against Respondent, as referenced in Finding of Fact number 4, above, are finally disposed of either by dismissal or acquittal, Respondent shall have the right to make written petition to the Board for amendment or termination of the conditions and restrictions placed on his Texas medical license by the terms of this order. The Board may then inquire into the request and may, in its sole discretion, grant or deny the petition. Subsequent petitions for modification or termination may be filed only once a year thereafter.

Any violation of the terms, conditions, and requirements of this Order shall constitute conclusive evidence of unprofessional or dishonorable conduct that is likely to deceive, defraud, or injure the public within Section 3.08(4) of the Act, and may result in disciplinary action pursuant to Section 4.01(a) of the Act.

The Board reserves the right and authority to proceed with possible disciplinary actions against Respondent based on the issues underlying the accusations referred to in Finding of Fact 4, above, or on any other matter, independent of the terms and conditions of this Order

In regard to all terms and conditions of this Agreed Order, Respondent waives any further hearings or appeal to the Board or to any court regarding this Order and the terms thereunder. Nothing in this paragraph shall be deemed a waiver of Respondent's rights under

rule, statute, or the United States or Texas Constitutions to appeal any decision or action which may later be taken by the Board subsequent to this Order, except as Respondent may have agreed herein. Respondent agrees that this Order is a final Order.

The Respondent hereby agrees that he shall be bound by all of the terms and conditions set out in this Agreed Order upon his signature of this instrument.

THIS ORDER IS A PUBLIC RECORD.

I, JAMES CHRISTOPHER JOHNSTON, M.D., HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY. I UNDERSTAND THIS AGREED ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED: 7. Sept, 1994

James Christopher Johnston
JAMES CHRISTOPHER JOHNSTON, M.D.
RESPONDENT

STATE OF

Texas))
)
)
)

COUNTY OF

Harris

BEFORE ME, on this day personally appeared James Christopher Johnston, M.D., known to me, who, first, being duly sworn, signed the foregoing Agreed Order in my presence.

SIGNED on this the 7th day of September, 1994.

Virginia A. Lewis
Notary Public, in and for
the State of Texas

Notary Seal

SIGNED this the 30th day of September, 1994.

John M. Lewis
John M. Lewis, M.D.
President, Texas State Board
of Medical Examiners

G-8880

IN THE MATTER OF) (BEFORE THE
) (
THE LICENSE OF) (TEXAS STATE BOARD
) (
JAMES CHRISTOPHER JOHNSTON, M.D.) (OF MEDICAL EXAMINERS

AGREED ORDER

On this the 22nd day of June, 1994, came on to be heard before the Texas State Board of Medical Examiners ("the Board"), duly in session the matter of the license of James Christopher Johnston, M.D. ("Respondent"). On June 9, 1994, Respondent appeared in person with Thomas P. Sartwelle, Susan Henricks, and Rip Collins, legal counsel, at an Informal Settlement Conference/Show Compliance Proceeding in response to the Board's letter of invitation dated June 7, 1994. Respondent executed a written waiver of ten (10) days written notice of the Informal Settlement Conference/Show Compliance Proceeding.

The Texas State Board of Medical Examiners was represented at the Informal Settlement Conference/Show Compliance Proceeding on June 9, 1994, by Jim Clark, a member of the Board, and Gladys Keene, M.D., a District Review Committee member. Upon recommendation of the Board's representatives and with the consent of Respondent, the Board makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. James Christopher Johnston, M.D., holds Texas medical license G-8880.
2. The Board has jurisdiction over the subject matter and Respondent. Respondent received all notice which may be required by law and by the rules of the Board. All jurisdictional requirements have been satisfied.
3. Respondent is a 34 year old physician, whose practice in Nacogdoches, Texas, has been limited to neurology.

4. Preceding the Informal Settlement Conference/Show Compliance Proceeding, and as recently as June 8, 1994, criminal complaints have been filed against Respondent in the 145th Judicial District, Nacogdoches County, Texas, alleging that Respondent has engaged in behavior constituting attempted sexual assault against individuals who were patients of Respondent.

5. Respondent denies all of the allegations made in the criminal complaints which have been filed against him.

6. Because of the seriousness of the allegations against him, and because of his desire to focus his resources and time on defense of the criminal case, and while making no admission regarding any accusation pending against Respondent before the Board, Respondent has voluntarily agreed to the entry of this Order placing restrictions on his Texas medical license.

CONCLUSIONS OF LAW

1. If the allegations contained in the criminal complaints against Respondent, as referenced in Finding of Fact 4, above, are found to be true, such behavior would constitute violations of Sections 3.08(4), 3.08(4)(A), and 3.08(18) of the Medical Practice Act ("the Act"), V.A.C.S., article 4495b.

2. Section 3.08(4) of the Act authorizes the Board to discipline a licensed Texas physician based on unprofessional or dishonorable conduct that is likely to deceive or defraud the public or injure the public.

3. Section 3.08(4)(A) of the Act authorizes the Board to discipline a licensed Texas physician based on committing any act that is in violation of the laws of the State of Texas if the act is connected with the physician's practice of medicine.

4. Section 3.08(18) of the Act authorizes the Board to discipline a licensed Texas physician based on professional failure to

practice medicine in an acceptable manner consistent with public health and welfare.

5. If Respondent is convicted of criminal sexual impropriety with any patient, such conviction would subject Respondent to discipline under Section 4.01(a) of the Act.

6. Section 4.01(a) of the Act authorizes the Board to discipline a licensed Texas physician based on an initial conviction or the initial finding of the trier of fact of guilt of a felony or misdemeanor involving moral turpitude.

7. Section 4.02(h) of the Act authorizes the Board to make a disposition of this matter by an Agreed Order.

Based on the above findings of fact and conclusions of law, it is therefore ORDERED that Respondent's Texas medical license is hereby restricted under the following terms and conditions:

1. Respondent's practice of medicine shall be restricted in that Respondent shall not examine or treat any patient after the date on which this Order is executed by the presiding officer of the Board.
2. No later than thirty (30) days after the date on which this Order is executed by the presiding officer of the Board, Respondent shall, except upon good cause shown, at Respondent's expense, submit himself for assessment through the Behavior Care Network program in Minneapolis, Minnesota, or through a similar program maintained at the Talbot-Marsh Recovery Systems facility in Atlanta, Georgia, or through a substantially similar program approved in advance, in writing, by the Executive Director of the Board. Such evaluation shall focus on the disparity between the complaints against Respondent and Respondent's own version of events and shall attempt to determine the degree of risk to

the public involved in Respondent's continued practice of medicine. To facilitate such evaluation, Respondent agrees that the Board may provide to the institution conducting the evaluation such portions of the Board's investigative material as may be deemed by the Board staff as necessary to fully inform the institution regarding Respondent's background and the allegations against him. A copy of this Order shall be provided to the evaluating institution as a reference in the evaluation and as authorization for the evaluating institution to provide to the Board oral and/or written reports regarding the results of the evaluation.

3. In the event that the evaluation required in provision 2, above, should indicate that Respondent, through his continued practice in medicine, constitutes no threat to the health, safety or welfare of patients, the Executive Director of the Board is authorized, at his discretion, to permit Respondent to resume examination and treatment of patients, pending further order of the Board, provided that Respondent shall not examine or treat any patient without being accompanied at all times by a proctor or chaperone, approved in advance by the Executive Director of the Board, which proctor or chaperone shall sign all patient charts to indicate his or her accompaniment of Respondent.
4. The Board reserves the right and authority to proceed with possible disciplinary actions against Respondent based on the issues underlying the accusations referred to in Finding of Fact 4, above, or on any other matter, independent of the terms and conditions of this Order.

5. Respondent shall cooperate with the Board, its attorneys, investigators, compliance officers, and other employees and agents, to verify that Respondent has complied and is in compliance with this Order.
5. Respondent shall advise the Board of any change of address, mailing or office, within (10) days of such occurrence.
6. Respondent shall comply with all the provisions of the Medical Practice Act ("the Act"), V.A.C.S., article 4495b, and other statutes regulating the practice of medicine, as is required by law for physicians licensed by the Board.

Any violation of the terms, conditions, and requirements of this Order shall constitute conclusive evidence of unprofessional or dishonorable conduct that is likely to deceive, defraud, or injure the public within Section 3.08(4) of the Act, and may result in disciplinary action pursuant to Section 4.01(a) of the Act.

In regard to all terms and conditions of this Agreed Order, Respondent waives any further hearings or appeal to the Board or to any court regarding this Order and the terms thereunder. Nothing in this paragraph shall be deemed a waiver of Respondent's rights under rule, statute, or the United States or Texas Constitutions to appeal any decision or action which may later be taken by the Board subsequent to this Order, except as Respondent may have agreed herein. Respondent agrees that this Order is a final Order.

THIS ORDER IS A PUBLIC RECORD.

I, JAMES CHRISTOPHER JOHNSTON, M.D., HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY. I UNDERSTAND THIS AGREED ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED: 18 May, 1994


JAMES CHRISTOPHER JOHNSTON, M.D.
RESPONDENT

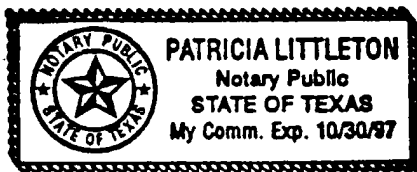
STATE OF Texas

COUNTY OF Nacogdoches

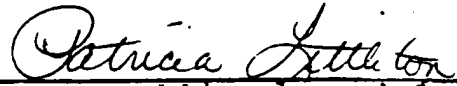
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BEFORE ME, on this day personally appeared James Christopher Johnston, M.D., known to me, who, first, being duly sworn, signed the foregoing Agreed Order in my presence.

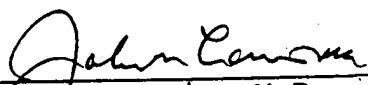
SIGNED on this the 18th day of Nacogdoches, 1994.



Notary Seal


Notary Public, in and for
the State of Texas

SIGNED this the 22nd day of June, 1994.



John M. Lewis, M.D.
President, Texas State Board
of Medical Examiners